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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,496	09/19/2003	Makoto Akune	7217/70907	8021
530 7590 05/26/2009 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090				
EXAMINER DAILEY, THOMAS J				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/666,496

Applicant(s)

AKUNE, MAKOTO

Examiner

Thomas J. Dailey

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/9/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 28-34 are pending.

Response to Arguments

2. The claim objections directed at claims 32 and 33 have been withdrawn in light of the entered amendments
3. Applicant's arguments filed 2/9/2009 have been fully considered but they are not persuasive.
4. The applicant argues with respect to the prior art rejections of the independent claims that neither Kidder (US Pat. 6,363,413) nor Parkkinen (US Pat. 7,072,366) disclose "upgrade-data being generated on a user-to-user basis by reviewing a usage-history of the user to determine the first format and then calculating the difference between the data in the first format and the data in the target format."
5. The examiner disagrees. Kidder discloses upgrade-data being generated on a user-to-user basis by reviewing a usage-history of the user to determine the first format (column 7, lines 36-44, user requests video clip for a second time and informs the server of the first format (i.e. bit rate apportionment) that the user received as a result of the first request (i.e. a usage history)).

As stated in the previous action, Kidder does not explicitly disclose specifying a target format and the upgrading data indicates the difference between the data in the first format and the data in the target format. Rather, Kidder's request is a generic request to improve the quality of the video, with no specific target format in mind, hence there is no explicit calculation of a difference.

However, Parkkinen discloses specifying a target format of a combination of previously received content data and upgrade data (column 4, lines 56- lines 66) and upgrading data that indicates the difference between the data in the first format and the data in the target format (column 6, lines 43-55, via the control information and enhancement data stream (upgrade data), the control unit can determine the difference between the target stream and the core stream).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kidder and Parkkinen in order to allow user control of the quality of the content data they receive from a content server.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kidder (US Pat. 6,363,413) in view of Parkkinen et al (US Pat. 7,072,366), hereafter "Parkkinen."
8. As to claim 28, Kidder discloses a content server for distributing upgraded content data, comprising:
 - a network interface for receiving an upgrade request from a user for content data previously downloaded by the user from the content server as base data of a first format (column 7, lines 36-43, the second user request for the video indicates the bit streams already in possession of the user (A1 and V1) whereupon the server sends the upgrading data (audio stream A2 and video stream V2) that is combined with the previously transmitted data in column 7, lines 50-57 in order to create a higher quality video clip);
 - a storage unit having a user-related information section for checking user-related information of the base data previously downloaded by the user (column 7, lines 36-43, information regarding the video data previously sent to the user is processed by the server);
 - an upgrading-data generating unit for generating upgrading data of the content data to upgrade the previously downloaded base data of the first format to the target format (column 7, lines 36-43, server generates video

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data V2 and audio data A2), the upgrade-data being generated on a user-to-user basis by reviewing a usage-history of the user to determine the first format (column 7, lines 36-44, user requests video clip for a second time and informs the server of the first format (i.e. bit rate apportionment) that the user received as a result of the first request (i.e. a usage history)); and

the network interface transmitting the upgrading data to the user in response to the upgrade request (column 7, lines 36-43).

But, Kidder does not explicitly disclose calculating the difference between the data in the first format and the data in the target format. Rather, Kidder's request is a generic request to improve the quality of the video, with no specific target format in mind; hence there is no explicit calculation of a difference.

However, Parkkinen discloses specifying a target format of a combination of previously received content data and upgrade data (column 4, lines 56- lines 66) and upgrading data that indicates the difference between the data in the first format and the data in the target format (column 6, lines 43-55, via the control information and enhancement data stream (upgrade data), the control unit can determine the difference between the target stream and the core stream).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kidder and Parkkinen in order to allow user control of the quality of the content data they receive from a content server.

9. As to claim 31, Kidder discloses a personal terminal for the playback of content data, comprising:

a network interface for sending an upgrade request to a content server for content data previously downloaded by a user as base data of a first format and receiving upgrading data of the content data in response (column 7, lines 36-43, the second user request for the video indicates the bit streams already in possession of the user (A1 and V1) whereupon the server sends the upgrading data (audio stream A2 and video stream V2) that is combined with the previously transmitted data in column 7, lines 50-57 in order to create a higher quality video clip), the upgrade-data being generated on a user-to-user basis by reviewing a usage-history of the user to determine the first format (column 7, lines 36-44, user requests video clip for a second time and informs the server of the first format (i.e. bit rate apportionment) that the user received as a result of the first request (i.e. a usage history));

a content-data combining unit for combining the upgrading data with the previously downloaded base data, whereby the base data is upgraded to the target format (column 7, lines 50-57, the first data stream is read

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from the cache and combined with the recently received second data stream with the end result being a video clip of higher quality); and an audio-signal processing unit for playback of the upgraded base data having the target format (column 7, lines 50-57, upgraded video clip with audio data can be played back for the user).

But, Kidder does not explicitly disclose calculating the difference between the data in the first format and the data in the target format. Rather, Kidder's request is a generic request to improve the quality of the video, with no specific target format in mind; hence there is no explicit calculation of a difference.

However, Parkkinen discloses specifying a target format of a combination of previously received content data and upgrade data (column 4, lines 56- lines 66) and upgrading data that indicates the difference between the data in the first format and the data in the target format (column 6, lines 43-55, via the control information and enhancement data stream (upgrade data), the control unit can determine the difference between the target stream and the core stream).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kidder and

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Parkkinen in order to allow user control of the quality of the content data they receive from a content server.

10. As to claim 34, it is rejected by the same rationale set forth in claim 28's rejection.

11. As to claims 29 and 32, Kidder discloses the base data includes a header comprising content-grade identification information indicating the first format (column 7, lines 36-39).

12. As to claims 30 and 33, Kidder discloses the higher quality is at least one of a higher sampling frequency and a higher bit rate of the content data (column 7, lines 50-64).

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee

pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is (571)270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/T. J. D./

Examiner, Art Unit 2452

/Dohm Chankong/

Primary Examiner, Art Unit 2452